

MEMORANDUM OF AGREEMENT
Between the
U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 10 and the
IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY
For the Activities of the
UNDERGROUND STORAGE TANK PROGRAM

I. INTRODUCTION

On November 8, 1984, the Hazardous and Solid Waste Amendments were signed into law, extending and strengthening the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA). The Solid Waste Disposal Act of 1970 was amended again by the Underground Storage Tank Compliance Act of 2005. One major portion of RCRA Subtitle I provides for the development and implementation of a regulatory program for underground storage tanks (USTs) used to contain regulated substances, which include petroleum and substances defined as hazardous substances under Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This Subtitle also provides for development and implementation of a remedial action program for Leaking Underground Storage Tanks (LUSTs).

A. Scope

This Memorandum of Agreement (MOA or Agreement), between the U.S. Environmental Protection Agency (EPA) and the Idaho Department of Environmental Quality (DEQ), covers the transition period from the effective date of the Idaho UST regulations (April 2, 2008) until the date DEQ's UST program receives approval from EPA under Section 9004 of RCRA, 42 USC § 6991c. This MOA outlines the respective roles and responsibilities of each agency during the transition period. This MOA may be renegotiated by either party upon 30 days written notice.

Nothing in this MOA shall be construed as surrendering existing statutory or regulatory authority of the EPA or DEQ. Nothing in this MOA shall be construed to restrict in any way EPA's authority to fulfill its oversight and enforcement responsibilities under RCRA Subtitle I. Nothing in this MOA shall be construed to contravene any provisions of 40 CFR Parts 280 and 281.

EPA reserves the right to act independently in any RCRA Subtitle I implementation and enforcement activity in the state. Prior to conducting UST compliance inspections or initiating enforcement actions within the State of Idaho, EPA will generally notify DEQ, verbally or in writing, for the purpose of coordinating state actions related to intended federal activity, except that, EPA will not generally provide notice to DEQ prior to issuing field citations. DEQ reserves the right to act independently under state authority. EPA and DEQ will coordinate closely on communications relating to enforcement, so that each agency will be aware of the other's enforcement activities.

When DEQ and EPA coordinate activities, as described in this Agreement, it is understood that the EPA Idaho Operations Office (IOO) shall normally be the initial point of contact between DEQ and EPA.

This MOA does not apply to UST activities in Indian Country. EPA retains responsibility for implementing the UST program in Indian Country.

This MOA does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not party to this Agreement, against DEQ or EPA, their officers or employees, or any other person. This MOA does not direct or apply to any person outside of DEQ and EPA.

B. Purpose

Under the federal UST regulations promulgated in September and October 1988, EPA is identified as the implementing agency until the state has obtained program approval or the state is designated the authority to act on behalf of EPA pursuant to an MOA. This MOA identifies specific activities that the state and EPA will carry out to implement the federal regulations. State activities will be described in detail in the State-EPA Agreement (UST Program) and Cooperative Agreement (LUST Program) work plans. EPA program funding will assist the state in implementing agreed-on activities during the transition period. However, nothing in this MOA, in and of itself, obligates EPA to expend appropriations or incur other financial obligations that would be inconsistent with Agency budget priorities. As required by the Antideficiency Act, 31 USC 1341 and 1342, all commitments made by EPA in this MOA are subject to the availability of appropriated funds.

This MOA is intended to assure efficient allocation of public funds, minimize duplicative effort, provide clear direction to the regulated community, safeguard the public welfare, and implement UST regulations in Idaho.

C. Authority

Section 9003(a) of Subtitle I requires EPA to promulgate standards covering detection, prevention, and correction of releases. These regulations were promulgated September 23, 1988, and became effective December 22, 1988. The regulations include the standards for new and existing tanks, reporting, and corrective action for leaks from tanks, and tank closure. The financial responsibility regulation, promulgated October 26, 1988, became effective January 24, 1989. Pursuant to the provisions of the Underground Storage Tank Compliance Act of 2005, EPA has also issued guidelines for states that receive funding from EPA establishing new delivery prohibition, secondary containment, financial responsibility, inspection, operator training, and public record requirements.

Subtitle I also provides a procedure by which the state may administer and enforce its own UST program in lieu of the federal program established under Section 9003. Under Section 9004 the state may submit its UST program for EPA approval.

II. DEFINITIONS

A. Specific Definitions

“Implementing agency” means EPA, or in the case of a state with a program approved under Section 9004 (or pursuant to a memorandum of agreement with EPA), the designated state agency responsible for carrying out an approved UST program.

B. General Definitions

Definitions pertaining to technical standards and corrective action are found in 40 CFR Part 280, Subpart A, § 280.12. Definitions are also found in guidelines issued by EPA pursuant to the Underground Storage Tank Compliance Act.

Definitions pertaining to Financial Responsibility are found in 40 CFR § 280.92.

Definitions pertaining to approval of state underground storage tank programs are found in 40 CFR § 281.12.

III. IMPLEMENTATION ACTIVITIES

Implementation activities are those tasks that will be conducted by the Idaho DEQ or EPA during the transition period. The specific activities assumed by the state will be determined by state priorities and resources, and the status of program development. The costs to the implementing agency of conducting these activities are allowable costs under program grants.

The activities below are required by the regulations and are also activities that will be included in the approved program. A number of these activities are already being undertaken by the state. Those activities designated as “State lead” are more fully described in the State-EPA Agreement and Cooperative Agreement work plans. Unless otherwise stated, EPA implementation activities described in this MOA will be initiated by the Idaho Operations Office (IOO).

The State and EPA agree to assume responsibility for the following activities as indicated:

A. NOTIFICATION

Task 1: Receive new notification forms with installation information
[§ 280.22] (State lead)

B. UST SYSTEM PERFORMANCE AND GENERAL OPERATING REQUIREMENTS

Task 1: Establish policy for handling variances.
(EPA lead)

NOTE: Several sections in the final federal regulations allow variances, or exceptions to the general regulatory requirements. EPA Region 10 does not anticipate approving variance requests except in those cases where national or regional consensus is attained.

Task 2: Assess compliance with performance standards of new and existing UST systems [§§ 280.20 - .21].
(State lead)

Task 3: Assess compliance with general operating requirements of new and existing UST systems [§§ 280.30 - .34].
(State lead)

C. REPORTING OF RELEASES AND CORRECTIVE ACTIONS

Task 1: Receive suspected leak reports [§ 280.50]
(State lead)

Task 2: Receive confirmed leak reports [§ 280.61]
(State lead)

Task 3: Receive reports of initial corrective action/abatement [§ 280.62(b)]
(State lead)

Task 4: Receive spill and overfill reports [§ 280.53]
(State lead)

Task 5: Receive initial site characterization reports [§ 280.63(b)]
(State lead)

D. CORRECTIVE ACTION IN RESPONSE TO A RELEASE

Task 1: Receive corrective action reports [§ 280.66(a)]
(State lead)

Task 2: Review and approve corrective action plans [§ 280.66(b)]
(State lead)

Task 3: Receive free product removal reports [§ 280.64(d)]
(State lead)

Task 4: Receive soil and groundwater cleanup plans and results if requested by implementing agency [§ 280.65(b)]
(State lead)

Task 5: Conduct public participation activities on cleanup plans [§ 280.67]
(State lead)

Task 6: Notify public of plans to terminate previously approved corrective action plans. [§ 280.67(d)]
(State lead)

E. TANK CLOSURES

Task 1: Receive notices of intent to close [§ 280.71(a)].
(State lead)

Task 2: Receive records for closures if not maintained at closed facility or alternate site for three years [§ 280.74(c)]
(State lead)

F. RELEASE DETECTION AND PREVENTION

Task 1: Assess compliance with leak detection requirements of new and existing UST systems [§§ 280.40 - .45].
(State lead)

G. FINANCIAL RESPONSIBILITY (applicable to USTs containing petroleum)

Task 1: Receive documentary evidence of financial responsibility from owner/operators [280.110(a)]
(State lead)

Task 2: Receive notification of bankruptcy [280.114(a), (c), and (e)].
(State lead)

Task 3: Receive State Attorney General's certification for guarantees and/or surety bonds [280.94(b)]
(State lead)

Task 4: Receive notifications of cancellation or non-renewal of coverage [280.109(b)]
(State lead)

Task 5: Monitor evidence of financial assurance mechanisms during inspections [280.111(a)]
(State lead)

Task 6: Draw on financial assurance mechanisms when necessary [§ 280.112]
(State lead)

Task 7: When necessary, require and receive reports of financial condition from a local government owner or operator, and/or local government guarantor and require local government owner or operator to obtain alternate coverage [§ 280.104(f)]
(State lead)

Task 8: When necessary, require and receive reports of financial condition from a local government owner or operator and require the local government owner or operator to obtain alternate coverage [§ 280.105(e)]
(State lead)

Task 9: Receive notification from a local government that it no longer meets the requirements of the financial test and fails to obtain alternate assurance [§ 280.105(f)] (State lead)

H. ENFORCEMENT

Task 1: Provide for enforcement against non-complying owners/operators.
(State lead)

NOTE: EPA Region 10 will undertake enforcement actions as appropriate. These actions may occur as a consequence of planned activities (e.g., monitoring compliance with existing system leak detection phase-ins) or random inspections (e.g., site visits).

I. PUBLIC OUTREACH

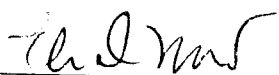
Task 1: Provide resources for public outreach on the substance and requirements of federal UST law and regulations, and other important UST issues. These activities will include mailing of information, presentations, distribution of video training tapes, and other approaches.
(State lead)

NOTE: DEQ agrees to undertake this task only to the extent that EPA funding is authorized for use for this activity.

IV. SUMMARY

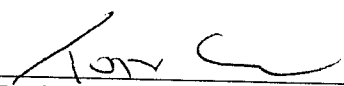
Each party to this MOA is responsible for ensuring that its obligations under the UST program are met. Both agree to maintain a high level of cooperation and coordination to assure successful and effective implementation of the federal regulations and to facilitate UST program development.

Once executed, this MOA will continue in effect unless modified by the mutual consent of both parties and/or until EPA receives and approves the state program. This MOA is subject to change based on any revised EPA national guidance. This MOA will be reevaluated annually and revised as necessary. This MOA will remain in effect until and unless terminated by the parties. Any party to this Agreement may withdraw from this Agreement by providing thirty (30) days written notice to the other party. Either party may initiate renegotiation of the MOA upon 30 days written notice. This MOA becomes effective upon execution of the signatures as indicated below.



Elin Miller, Regional Administrator
U.S. Environmental Protection Agency
Region 10

7/29/08
Date



Toni Hardesty, Director
State of Idaho
Department of Environmental Quality

7/29/08
Date